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No. 04-

IN THE

Supreme Court of the United States

SYED M. TARIQ-SHUAIB,

Petitioner,

v.

NEW YORK CITY HOUSING AUTHORITY
CONSTRUCTION DEPARTMENT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

May parties represented by attorneys of record file "pro se" motions or do the principles underlying Rule 11 of the Federal Rules of Civil Procedure preclude same, so as to avoid prejudice to the client?

II

Does the Federal Court need to interpret the import of Orders of "closure" made pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 inasmuch as same should be treated as dismissals, despite the explicit language contained therein that same are not "dismissals"?

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the Judgment of the U.S. Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit opinion is dated April 6, 2004 (Appendix "A") (1-2)). The District Court opinion is dated October 18, 2002, A. 3-4.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

Rule 11 of the FRCP is primarily involved; as is the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973; and to a lesser extent FRCP 41(b) is involved because the case was erroneously dismissed under it.

STATEMENT OF THE CASE

Attorney for Petitioner commenced civil rights case. Defendant moved to dismiss in lieu of answering, which was denied. Defendant moved for summary judgment which was also denied. No time deadlines were set by the Court. Attorneys appeared throughout for Plaintiff.

The law firm of Ranni Vassalle Dussek & DiMartini LLP filed a Notice of Appearance on June 15, 2000, signed by Joseph Ranni. Previously, Mr. Dussek for Bogan, PC was appearing of record on the papers and in Court, and had signed the Complaint for Plaintiff.

The case was administratively closed on September 19, 2000 by Minute Order, A9, pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973. Although there were attorneys of record for plaintiff, plaintiff "pro se" moved to reopen. That motion was denied and the case was dismissed thereupon for "failure to prosecute", A 3-4 . As is clear from the District Court's decision the District Judge treated the "pro se" motion to "reopen" as one to "vacate a default". The Second Circuit affirmed by (a most) summary order, A1-2.

REASONS FOR GRANTING THE PETITION

There are two salient reasons for the Court to grant the writ: 1. because the application of FRCP 11 should not permit parties with attorneys of record to appear "pro se" without a proper substitution of attorneys; 2. because Administrative Orders of closure have to be interpreted because this case was "re-opened" upon the filing of the motion to re-open pursuant to the terms of the Administrative Order, therefore rendering the pro se motion "moot" (see entry on docket sheet of 9/3/02 "Case reopened"), but the District Court treated the "pro se" motion as if it was to vacate a default (although it was moot since the case was reopened). Both issues involve this Court's role as highest Federal Court to police practices of the lower courts, which in this instance very much needs policing.

POINT I

FRCP 11 REQUIRES ATTORNEY OF RECORD TO SIGN MOTION PAPERS

Rule 11 requires attorney's of record to sign the papers. Same fixes responsibility on the attorney's of record which has a sanguine effect on the Court and the parties.

Here, plaintiff filed a motion as a "pro se" (while the case had not been dismissed). Hence, same should not have even been accepted for filing by the Clerk. If the Clerk didn't catch the mistake, the Judge should have.

Permitting parties to file motions in cases where they have attorneys as "pro se" undermines the principles and policies behind FRCP Rule 11. In Point II herein below, those principles are highlighted because, the attorney of record would have known that such a motion was unnecessary, wasteful, and could be explained more expertly than by a "pro se". Allowing parties with attorneys of record to file "pro se" motions is also an invitation for complete chaos for the Federal Courts.

In American History the Veteran's Bonus March of the 1930's is recalled. President Hoover ordered the protesters removed by force. Franklin Roosevelt said if he were President then he would have instead of force invited the protesters into the White House for "tea".

The District Judge should have, like Roosevelt would have, told plaintiff he was not "pro se", but had an attorney, and that his case was already reopened.

POINT II

COURT NEEDS TO INTERPRET ORDERS OF CLOSURE MADE PURSUANT TO THE MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS DATED 6/15/1973

The September 19, 2000 Minute Order, A9, pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 is a "closing" of the case for lack of docket activity. The Minute Order recites "Nothing contained in this minute order shall be considered a dismissal or disposition of these matters, and should further proceedings in them become necessary or desirable, any party may initiate it in the same manner as if this minute order had not been entered". In other words, as soon as there was further docket activity the Minute Order was to be mooted.

In fact, after the plaintiff "pro se" filed his motion to reopen, the case was "reopened" on the docket sheet on 9/3/02 as "Case reopened", rendering any relief requested in same "moot". But the Court erred in addition to not holding the relief requested as "moot", or part of an impermissible pro se filing, but by treating the "pro se" motion as one under FRCP 60 to vacate a dismissal. This is, as above, an error of law, and the ignoring of the plain terms of the Minute Order.

There are no known cases interpreting the terms of such Minute Order in this context. However, given the number of years since the issuance of the Memorandum, there could be a wide applicability to same.

CONCLUSION

On the surface this could appear as a small case not worthy of the special attention of this Court. But small does not mean unimportant, nor does it mean that the issues do not warrant that special attention.

FRCP 11 is a special rule of the Federal Courts essentially requiring attorneys of record to act for their parties in the Court. Here the lower courts literally ignored not only the importance of Rule 11, but the Rule itself, as no Court took any notice of it nor how it applies. Is not the ramification of the rulings below that parties represented by attorneys of record are free to file "pro se" motions? and then appear as "pro se"?

Likewise the fact that the "administrative closing" was pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 went without any attention by the below courts. The District Court Judge treated same as if it was a dismissal of the case, not a mere administrative closing, where the reopening occurred automatically upon a further docket entry, and therefore that the "pro se" motion was already "moot" by the time it was decided by the Court because the Clerk had already re-opened the case. Attorneys would have noticed the "mootness".

Finally, the District Court used the fact of the 9/11 disaster against an arabic sounding pro se plaintiff name. Perhaps, the Court may just wish to correct a prejudice.

Respectfully submitted,

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